Supreme Court, U. S.
FILED
JUN 15 1979
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1978
No. 78-1422

RETIREMENT FUND TRUST OF THE PLUMBING, HEATING AND PIPING INDUSTRY OF SOUTHERN CALIFORNIA,
Appellant,

vs.

EDITH J. JOHNS,
Appellee.

Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

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vs.

EDITH J. JOHNS,

Appellee.

Appeal From the Supreme Court of the State of California.

MOTION TO DISMISS.

Appellee, pursuant to Rule 16(1)(b) of the Rules of the Supreme Court of the United States, moves the Court to dismiss the appeal herein on the following grounds:

1. The appeal does not present a substantial federal question.

2. The judgment of the Supreme Court of the State of California rests on an adequate non-federal basis.

Statement of the Case.

This appeal was submitted to the Court of Appeal of the State of California on an agreed statement pursuant to Rule 6(a) of the California Rules of Court. The pertinent facts were and are that Leroy A. Johns, hereinafter referred to as "Johns", was the husband of appellee; that during his marriage to appellee, Johns accumulated retirement credits, and is 100% vested in his pension fund, and is now and was at the time of the dissolution proceedings, receiving retirement benefits from appellant, Retirement Fund Trust of the Plumbing, Heating and Piping Industry of Southern California; the retirement benefits are wholly community property; all of these funds were earned during the marriage and are 100% community property. The Court of Appeal affirmed the trial court, and the California Supreme Court denied appellant's petition for hearing on December 20, 1978.

ARGUMENT.

1. The Appeal Before This Court Does Not Present a Substantial Federal Question.

Appellant's jurisdictional statement states that the grounds for the appeal is an alleged conflict between California community property law [Civil Code Sections 5105 and 5125] and federal law [the Federal Constitution (Article VI, Cl. 2); the Employee Retirement Income Security Act of 1974 (ERISA), 29 USC §1001 *et seq.*); and the National Labor Relations Act (NLRA), 29 USC §186 (C)(5)]. *Jurisdictional Statement*, page 2.

Appellant's argument in support of this alleged conflict ignores the fact that the federal law and the state law have as their objectives entirely different purposes.

The state law deals only with the relationships between spouses and their interests in community property. Only in limited instances, when a *federally* created right has been classified as community property, has this court refused to recognize the power of the state to determine the ownership of community property and direct its division. See: *Wissner v. Wissner,* 338 US 665 (1949) [National Service Life Insurance]; *Free v. Bland,* 369 US 663 (1962) [United States Savings Bonds]; *Hisquierdo v. Hisquierdo,* ..... US ....., 47 USLW 4141 (Jan. 22, 1979) [Railroad Retirement Act Benefits].

The federal laws, ERISA and NLRA, do not conflict with the state law, although if they did so conflict,

the state law would fall under the Federal Constitution. US Const. Article VI, Cl. 2.

ERISA was enacted and signed into law to provide ". . . safeguards . . . with respect to the *establishment, operations,* and *administration* of private employee benefit plans," and to establish ". . . minimum standards . . . assuring the equitable character of such plans and their financial soundness . . . [and to establish] standards of conduct, responsibility and obligations of fiduciaries." [Emphasis added] [ERISA §2 (29 USC §1011)]; see also 1974 US Code Congressional and Administrative News, 4639, *et seq.;* all other provisions of ERISA, particularly those dealing with preemption of state law.

Section 514(a) of ERISA [29 USC §1144(a)] has been cited by Appellant to support the argument for preemption. This section reads as follows:

> "(a) Except as provided in subsection (b) of this section, the provisions of this title and title IV shall supersede any and all state laws in so far as they may now or hereafter relate to any employee benefit plan described in Section 4(a) and not exempt under Section 4(b). This section shall take effect on January 1, 1975."

Section 514(c) of ERISA [29 USC §1144(c)] reads as follows:

> "(c) For purposes of this Section:
>
> "(1) The term 'State law' includes all laws, decisions, rules, regulations, or other state action having the effect of law of any state. A law of the United States applicable only to the District of Columbia shall be treated as a State law rather than a law of the United States.

> "(2) The term 'State' includes a State, any political subdivision thereof, or any agency or instrumentality of either, which purports to regulate, directly or indirectly, *the terms and conditions* of employee benefit plans covered by this title."

The entire thrust of §514 of ERISA (29 USC §1144) is that a state shall not regulate or apply state law to establish standards of conduct, responsibilities or obligations of fiduciaries with respect to the administration, establishment or operation of covered plans. See: *Carpenters Pension Trust for Southern California v. Kronschabel,* 460 F. Supp. 978.

It is clear that the intent of ERISA, as set forth in the plain language of the act (§2 *supra*) does not conflict with the state scheme of division of community property, much less do "major damage" to "clear and substantial" federal interests required to override state family and family property law. *United States v. Yazell,* 382 US 341 (1966).[1]

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[1]It is of note that the ERISA Improvement Act of 1979 (S209) has been introduced and contains provisions designed to eliminate even the appearance of preemption. Section 155 of that Bill reads in part:

"Section 155. Preemption.

"Section 514 of the act is amended by . . .

"(2) adding a new subsection (b)(6) to read as follows:

"(6) Subsection (a) shall not apply respecting any judgment, decree, or order pursuant to a state domestic relations law (whether of the common law or community property type) if such judgment, decree or order is described in Section 206(d)(3)."

The proposed Section 206(d)(3) is contained in Section 128 of S209 and reads as follows:

"Section 128. Alimony and Support Payments.

"Section 206 of such Act is amended by adding at the end thereof the following new paragraph:

"(3) Paragraph (1) shall not apply in the case of any judgment, decree or order (including an approval of a property settlement agreement) pursuant to a State Domestic relations

(This footnote is continued on next page)

Likewise, the National Labor Relations Act enacted to prevent employees from tampering with the loyalty of union officials and to prevent union officials from extracting improper payments from employees, *In re Typo-Publishers Outside Tape Fund,* 478 F. 2d 372 (2d Cir., 1973), does not in any way conflict with the California law which determines ownership of employee fringe benefits.

Although Appellant places great emphasis on the recent decision of this court in *Hisquierdo v. Hisquierdo,* ..... US ....., 47 USLW 4141 (1979), the explicit language of footnote 24 on page 18 of that opinion makes further discussion of the *Hisquierdo* opinion irrelevant to the instant appeal.

2. The Judgment of the Court of Appeal of the State of California Rests on an Adequate State Ground.

The decision of the Court of Appeal in the instant case holds that the Appellee claims a one-half ownership of the benefits in her spouse's retirement benefits. 85 Cal. App. 3d 511, 149 Cal. Rptr. 551 (1978).

This concept of ownership by the community is not new, see *Phillipson v. Board of Administration,* 3 Cal. 3d 32, 89 Cal. Rptr. 61, 473 P. 2d 649 (1970); *Waite v. Waite,* 6 Cal. 3d 461, 99 Cal. Rptr. 325, 492 P. 2d 13 (1972); *In re Marriage of Brown,* 15 Cal. 3d 838, 126 Cal. Rptr. 633,

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law (whether of the common law or community property type) which

"(A) affects the marital property rights of any person in any benefit payable under a pension plan or the legal obligation of any person to provide child support or make alimony payments, and,

"(B) does not require a pension plan to alter the effective date, timing, form, duration or amount of any benefit payments under the plan or to honor any election which is not provided for under the plan or which is made by a person other than a participant or beneficiary."

544 P. 2d 561 (1976), and has been approved, at least inferentially, by this court. *In re Marriage of Fithian,* 10 Cal. 3d 592, 111 Cal. Rptr. 369, 517 P. 2d 449, *cert. den.* 419 US 425, *rehrg. den.* 419 US 1060 (1974). See also *Hisquierdo v. Hisquierdo,* ..... US ....., 47 USLW 4141 (1979), fn. 14, opinion p. 8.

California community property law merely assures that the property rights of the non-working spouse are protected. The order of the Superior Court and the opinion of the Court of Appeal merely assure that the non-working spouse receives that to which she is entitled without the necessity of continually resorting to legal process to enforce her rights.

Conclusion.

It is submitted, that the case at bar does not present a substantial federal question and that the judgment of the Court of Appeal rests on an adequate State ground. Appellee, therefore, moves that the appeal herein be dismissed.

Respectfully submitted,

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